

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

DOCKET FILE COPY ORIGINAL

In the matter of

Definition of Markets for Purposes of the  
Cable Television Mandatory Television  
Broadcast Signal Carriage Rules

**CS Docket No. 95-178**

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SECRETARY  
FEB 5 1996  
COMMISSION

**COMMENTS OF**  
**THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

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The following comments are submitted by the Association of Local Television Stations, Inc. ("ALTV"), in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>1</sup> ALTV is a non-profit, incorporated association of broadcast television stations unaffiliated with the ABC, CBS, or NBC television networks.<sup>2</sup> ALTV's member stations will be affected directly by the Commission's action in this proceeding.

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<sup>1</sup>FCC 95-143 (released April 7, 1995)[hereinafter cited as *Notice*].

<sup>2</sup>Local stations among ALTV's members include not only traditional independent stations, but also local television stations affiliated with the three emerging networks, Fox, UPN, and WB.



In its *Notice* the Commission proposes a radical change in its rules. In 1993, the Commission established “a scheme whereby ADI designations will be set for a three year period designed to coincide with the three year election time frame for the must-carry/retransmission consent election.”<sup>3</sup> Now the Commission proposes to shelve the 1993 approach in favor of freezing the ADI designations now in use (*i.e.*, those set forth in the Arbitron 1991-92 *Television ADI Market Guide* ).<sup>4</sup> Thus, the 1991-92 list would define the geographic scope of nearly every television market in perpetuity.<sup>5</sup>

ALTV opposes the Commission’s proposal and urges the Commission to replace the defunct Arbitron ADI list with the Nielsen DMA list and otherwise maintain its current scheme of triennial revisions to the market list employed for must carry/retransmission consent purposes. This is the obvious, to say nothing of the only necessary, sound, and sensible response to Arbitron’s departure from the television ratings market.


Nonetheless, and certainly for no apparent good reason, the Commission has been lured into reconsideration of its 1993 decision. The ostensible, but specious, provocation for the Commission’s proposal is the departure of Arbitron from the television ratings business. Because no more television ADI market guides will be published, the Commission says that “the rules need

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<sup>3</sup>*Report and Order*, 8 FCC Rcd 2965, 2975 (1993) [hereinafter cited as *Report and Order*]

<sup>4</sup>*Notice* at ¶7.

<sup>5</sup>A few markets located outside the 48 contiguous states have been defined via alternative means. *Report and Order*, 8 FCC Rcd at 2975.



to be amended to establish a new mechanism for *defining market areas* in which television broadcasters may insist on carriage.”<sup>6</sup>

In reality, however, the Commission has seized upon Arbitron’s departure from the ratings business not so much as a reason to revisit the question of the geographic scope of television markets, but as a demonstrably lame excuse to abandon its current practice of triennial revisions of market areas. First, the departure of Arbitron from the television ratings business was no condition precedent to writing the 1991-92 market list into stone. The Commission could have proposed or determined to freeze the 1991-92 market list regardless of Arbitron’s presence or departure from the market. In other words, from the moment the 1991-92 market list existed, the Commission has enjoyed the option of placing full and everlasting reliance on its market definitions. No subsequent event was necessary to precipitate consideration or adoption of the 1991-92 list as the permanent arbiter of market boundaries. Indeed, in 1993, the Commission considered, but rejected using the 1991-92 market list in perpetuity.<sup>7</sup>

Moreover, the departure of Arbitron from the market hardly compels enshrining the 1991-92 list because no alternative list exists. The Commission must and does acknowledge the availability of annually updated market reports from Nielsen, which easily could be used to maintain the current scheme of triennial updates.<sup>8</sup> Thus, Arbitron’s exit from the market is no more or less than a transparent rationalization for revisiting an issue settled in 1993, *i.e.*, whether to adopt a permanent market list or update the list prior to each triennial must carry/retransmission consent election.

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<sup>6</sup>Notice at ¶6 [emphasis supplied].

<sup>7</sup>Report and Order, 8 FCC Rcd at 2975.

<sup>8</sup>Notice at ¶6.



ALTV finds itself bemused and incredulous in the face of the Commission's proposal. After all, the substitution of Nielsen DMAs for Arbitron ADIs has been the obvious and logically inevitable response to Arbitron's departure from the market. The Commission has considered ADIs and DMAs analytically similar and virtually equivalent. It has substituted Nielsen DMAs for Arbitron ADIs in other cases where the market definition in §73.3555(e)(3)(i) is employed. Now, however, it turns a blind eye towards its prior actions and attempts to breath new life into the rotting carcass of a proposal considered, rejected, and interred in 1993.

No nimble reversal of course this. Despite the need to offer a compelling justification for its proposed 180° change in policy, the Commission does little more than fret and whine in a decidedly ambivalent fashion that shifting to DMAs and continuing the triennial revisions may not be much of an improvement. First, according to the Commission, perpetual reliance on the 1991-92 Arbitron list has the advantage of providing stability in the television broadcast signal carriage process.”<sup>9</sup> Remarkably, this comes from the same Commission which said in 1993 that a *triennial revision* provided “stability for the affected parties.”<sup>10</sup>

Second, the Commission says, “It is not clear whether changing from ADIs to DMAs and revising market boundaries every three years based on shifting audience patterns, involves any systematic improvement in market definitions.”<sup>11</sup> The Commission is concerned particularly that county changes might occur as a result of “random statistical variations based on transitory changes in audience levels.”<sup>12</sup>

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<sup>9</sup>*Id* at ¶7.

<sup>10</sup>*Report and Order*, 8 FCC Rcd at 2975.

<sup>11</sup>*Id.*

<sup>12</sup>*Notice* at ¶7.


The Commission's concerns are unfounded. Shifting DMA counties doubtfully ever would result from transitory shifts in audience between stations in different markets. No more likely are DMA county shifts based on statistical quirks. In any event, the triennial revision process assures against recognition of county flip-flops, even assuming *arguendo* they might result from transitory audience changes or random statistical variations.

Third, the Commission worries that "changing from one system to the other would raise questions as to the numerous cases which have already been processed under Section 614(h) revising market areas with respect to particular stations and particular communities."<sup>13</sup> What questions? Those cases have been decided *irrespective* of the general market definition. Indeed, in some cases, the fact that an area was within a station's DMA, but outside its ADI, provided grounds for the Commission's determination to include the county or community in the stations' market! ALTV submits that the Commission ought be more concerned that locking in an already five year old list will spawn more and more market revision cases as the list becomes increasingly obsolete and outdated.

ALTV, therefore, urges the Commission to replace the defunct Arbitron ADI list with the Nielsen DMA list and otherwise maintain its current scheme of triennial revisions to the market list employed for must carry/retransmission consent purposes.

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<sup>13</sup>*Id.*




As an alternative to its proposal to use the 1991-92 Arbitron list in perpetuity, the Commission also has noted the option of substituting Nielsen DMAs for Arbitron ADIs.<sup>14</sup> Although the Commission disfavors this option, ALTV submits that it is the only rationally defensible course of action. *Reality* must remain at the core of the process. In reality, markets change. In reality, Nielsen DMAs now are the only reflection of the reality in which stations and advertisers function. How could denying reality (or denying a station the ability to assure access to its audience and compete effectively in a county in its market) possibly be squared with the objectives of the must carry statute? As stated by Congress, its objective was “to assure that television stations be carried in the areas which they serve and which form their economic market.”<sup>15</sup> The definition of a station’s true market now is defined by its DMA. Consequently, the Commission, which considers the DMA the “equivalent” of the ADI, already has adopted the DMA as a replacement for the ADI in other contexts. Therefore, the Commission ought bow to the altar of logic, common sense, and consistency and utilize DMAs in lieu of ADIs for purposes of the must carry/retransmission consent rules.

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<sup>14</sup>Notice at ¶6.

<sup>15</sup>H.R. Rep. 102-628, 103d Cong., 2d Sess., at 97 [hereinafter cited as “H. Rep.”].





**A. The Commission Considers the Nielsen DMA the "Equivalent" of the Arbitron ADI.**

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The DMA concept hardly is unknown to the Commission. As it stated just a year ago:

Areas of Dominant Influence are defined for all broadcast stations on a county-by-county basis by Arbitron to facilitate transactions between advertisers and those broadcast stations. Designated Market Areas are defined by A.C. Nielsen and are *analytically similar* to the ADI.<sup>16</sup>

Indeed, the staff routinely calls the DMA "Nielsen's equivalent of the Arbitron ADI."<sup>17</sup> Even in the current *Notice*, the Commission notes that, "Both listings...appear to have been intended to serve roughly the same purposes in the sales of broadcast station advertising and programming."<sup>18</sup>

The Commission's appreciation of the fungible nature of the ADI and DMA is well-founded. Both concepts generally assign counties to markets based on viewing. As stated by "Mal" Beville, an expert in the field and longtime executive director of the then Broadcast Ratings Council:

By covering every U.S. county in their syndicated diary surveys, the ratings companies collect large enough samples over time to produce county-by-county coverage studies that define where each station has reportable audiences. These studies define broad market areas identified with metropolitan areas or cities. Arbitron calls these Areas of Dominant Influence (ADI); Nielsen, Designated Market Areas (DMA). These areas essentially delimit by county the area in which viewers tune primarily to stations located in a given metropolitan area. By

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<sup>16</sup>*Further Notice of Proposed Rule Making*, MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524, 3539, n. 59 (1995)[emphasis supplied].

<sup>17</sup>*Smith Television of New York*, 10 FCC Rcd 7127, 7131 (C.S. Bur. 1995); *see also Counterpoint Communications, Inc.*, 10 FCC Rcd 4932, 4934, n. 18 (C.S. Bur. 1995) ("...DMA...the Nielsen equivalent of the ADI"); *Greenville Television, Inc.*, 10 FCC Rcd 6491, 6493, n. 11 (C.S. Bur. 1995) ("Nielsen also includes the area in question as within the Greenwood-Greenville 'DMA,' its equivalent of Arbitron's ADI.").

<sup>18</sup>*Notice* at ¶6.

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eliminating overlap, this procedure produces 200+ nonduplicated market areas that are mutually exclusive and additive.<sup>19</sup>

Thus, like Arbitron's ADI, the Nielsen DMA involves assignment of counties to particular DMAs based on viewing.

Any distinctions based on methodology epitomize the proverbial "distinction without difference." ADI assignments were based on which home market stations received a preponderance of total viewing hours.<sup>20</sup> DMA assignments are based on which home market stations achieve the largest quarter hour audience share.<sup>21</sup> This distinction between viewing hours and average quarter-

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<sup>19</sup>Beville, Hugh Malcolm, Jr., *Audience Ratings: Radio, Television, and Cable*, Lawrence Earlbaum Associates, Hillsdale New Jersey (1985) at 198.

<sup>20</sup>Arbitron describes the ADI as follows:

The ADI or Area of Dominant Influence is a geographic design which defines each television market, exclusive of all others, based on measured viewing patterns. It is an area that consists of Arbitron sampling units in which the home market commercial stations and satellite stations reported in combination with them received a preponderance of local viewing hours....Each county in the U.S. (excluding Hawaii and Alaska) is allocated exclusively to one ADI. There is no overlap.

Arbitron, *Television Universe Estimates Summary*, 1993-94, at i.

<sup>21</sup>Nielsen describes the DMA as follows:

Designated Market Area (DMA) county assignments are made as follows:

- A. In general, for an NSI market to qualify for, or retain, a DMA, all counties combined in the Metro/Central Area(s) must meet either of the following conditions: (1) the commercial stations assigned to the NSI market must achieve the largest share of the 7 AM to 1 AM average quarter-hour household audience in the Metro/Central area, or (2) one commercial station in the Metro/Central area must achieve a larger share of the 7 AM to 1 AM average quarter-hour household audience than any commercial station outside the market. In the absence of a Metro/Central area, the home county(s) of the commercial station(s) in the NSI market will be treated as a Metro/Central area.
- B. All other counties, including Metro/Central counties not qualifying under A. above will remain in the current DMA if the commercial stations in that market achieve the largest average quarter-hour

hour share has no appreciable practical significance. As Mal Beville observed, "ADIs and DMAs...were often identical and seldom varied by than one or two small outlying counties."<sup>22</sup>

The Commission, therefore, properly has considered the ADI and DMA concepts virtual equivalents.

**B. In Other Instances Where the Commission Has Used the ADI It Already Has Embraced the DMA as the Appropriate Substitute.**

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In the must carry statute, Congress adopted the definition of local market specified in §73.3555(e)(3)(i) of the Commission's rules, 47 CFR §73.3555(e)(3)(i). That definition, based on the ADI, dealt with broadcast ownership issues. The Commission, therefore, also has had to confront the consequences of the demise of Arbitron's television ratings and annual ADI list in the context of broadcast ownership proceedings.

Earlier this year, the Commission proposed to use DMAs in its analyses of broadcast ownership matters.<sup>23</sup> Shortly thereafter, the Commission began analyzing ownership issues using

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audience share, 7 AM to 1 AM.

C. Each county (or sub-county) is assigned to one and only one DMA.

D. County assignments are reviewed and updated annually each spring based on information accumulated to date.

Nielsen Station Index, *Viewers in Profile, Seattle-Tacoma, WA* (1992) at back cover.

<sup>22</sup>Beville, *supra*, at 267.

<sup>23</sup>*Further Notice of Proposed Rule Making*, MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524, 3539, n. 59 (1995) ("Since Arbitron no longer updates its ADI lists, we propose to use DMAs in our future analysis of the issue...."). The Commission further stated:

We propose to continue to rely on a contour overlap standard but will consider the DMA definition of "local" for determination of the relevant geographic dimensions of the market for delivered programming.



DMA-based factual showings. Thus, for example, in *Media/Communications Partners Limited Partnership*, 10 FCC Rcd 8116, n.3 (1995), wherein Capital Cities/ABC sought waivers of one-to-a-market rule, the Commission stated:

Throughout its waiver request, CC/ABC uses A.C. Nielsen's DMA statistics rather than Arbitron's Area of Dominant Influence ("ADI"). We will accept the applicant's showing since Arbitron no longer updates its ADI lists. *See Further Notice of Proposed Rule Making* in MM Docket No. 91-221 and MM Docket 87-8, FCC 94-322, at fn. 59 released January 17, 1995) [*sic*] 1995 WL 40376.

The Commission recently confirmed its reliance on DMAs in lieu of ADIs under §73.3555(e)(3)(i) in approving the Westinghouse acquisition of CBS, Inc.:

*Second Report and Order*, 4 FCC Rcd at 1751, instructs those applicants seeking waiver to utilize the "Area of Dominant Influence," or ADI, as defined by Arbitron Ratings Company. Because Arbitron no longer updates its ADI lists, we now accept instead the "Designated Market Area," or DMA, as defined by A.C. Nielsen. *See Media/Communications Partners Limited Partnership*, 10 FCC Rcd 8116, 8116, n.3 (1995).<sup>24</sup>

Thus, the Commission already has recognized that the DMA is the appropriate substitute for the ADI for purposes of §73.3555(e)(3)(i). The Commission's reticence to accept the DMA for must carry/retransmission consent purposes then becomes much more difficult to fathom or explain.

**C. Consistent with Congressional Intent, Use of the DMA Would Reflect the Reality of the Broadcast Markets.**

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Congress carefully considered the proper scope of a station's local carriage area for must carry/retransmission consent purposes. It ultimately settled on the ADI as "the most common industry definition of a television market."<sup>25</sup> Moreover, it reflected the reality of the television

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*Id.*, 10 FCC Rcd at 3540 (1995).

<sup>24</sup>*Stockholders of CBS, Inc.*, FCC 95-469 (released November 22, 1995) at ¶69, n.24.

<sup>25</sup>H. Rep. at 66.

business -- a key objective of Congress -- "to assure that television stations be carried in the areas which they serve and which form their economic market."<sup>26</sup> The Commission has acknowledged Congress's intent:

The use of ADI markets, according to the legislative history of the 1992 Cable Act, is intended "to ensure that television stations be carried in the areas which they service and which form their economic market."<sup>27</sup>

In short, Congress -- and the Commission -- have looked to the *reality* of the industry and, in particular, stations' economic markets in defining their local areas for must carry/retransmission consent purposes.

That reality now is best expressed by resort to DMAs as the only logical substitute for ADIs. Beyond the Commission's recognition of the functional equivalence of the ADI and DMA, use of the DMA, no less than the use of the ADI, would most closely follow the Congressional directive to focus on market realities. Indeed, the DMA has been and remains a critical unit of measurement in the purchase of broadcast advertising. Again, as explained by Mal Beville:

Because of today's dominance of television in national advertising and marketing, the ADIs and DMAs have been adopted for many corporate marketing and control functions and are widely used as the basis for the geographic distribution of advertising expenditures for radio, newspapers, and other media.<sup>28</sup>

He further explained:

ADIs and DMAs were additive (with no duplication problems) and could easily be computed for lineups of network or spot stations used by advertisers, as could audience projections from these market units. Very quickly, ADIs and DMAs (which were often identical and seldom varied by more than one or two small outlying counties) became basic market and media units of measurement for sales quotas, advertising appropriations, and other marketing distributions. The FCC adopted ADI market ranking as a basis for certain regulatory guidelines. Radio and

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<sup>26</sup>*Id.* at 97.

<sup>27</sup>*Greater Worcester Cablevision, Inc., et al.*, DA 95-2304 (released November 15, 1995) at ¶14, citing H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>28</sup>Beville, *supra*, at 198.

newspaper audience data are published on this geographic unit. Television's prime marketing role for national advertisers was confirmed by industry acceptance and use of ADIs and DMAs.<sup>29</sup>

As similarly observed by one industry critic:

Over 200 broadcast ratings services or audience research firms exist in the United States. The largest and most powerful is the A.C. Nielsen Company.

\* \* \*

There is little controversy that the Nielsen ratings are a powerful force in American broadcasting. The Nielsen ratings are considered to be official by the advertisers for the national market.<sup>30</sup>

No reasonable doubt may exist that the DMA reflects the reality of television like the ADI originally selected by Congress as the definition of local for must carry/retransmission consent purposes.

The Commission hardly is in any position to question this. Indeed, in *Smith Television of New York*, 10 FCC Rcd 7127, 7131 (C.S. Bur. 1995), the staff relied in part on the fact that Schuyler County, New York, had been assigned to the Elmira DMA in determining to include Schuyler County in the Elmira ADI for purposes of the Commission's mandatory broadcast signal carriage rules. Similarly, in determining to include the City of Grenada, Mississippi, in the Greenwood-Greenville, Mississippi ADI for purposes of the Commission's mandatory broadcast signal carriage rules, the staff stated:

Nielsen also includes the area in question as within the Greenwood-Greenville "DMA," its equivalent of Arbitron's ADI. *Television & Cable Factbook*, Vol. 63, p. A-615 (1995). This provides some additional support for the conclusion that it is reasonable to include Grenada with the market of WXVT."<sup>31</sup>

These cases only underscore the Commission's acceptance of the DMA as a true reflection of a station's local market area.

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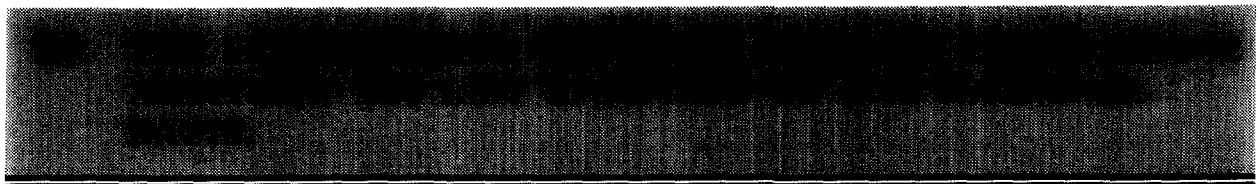
<sup>29</sup>*Id.* at 267.

<sup>30</sup>Cantor, Muriel G., *Prime-Time Television Content and Control*, Sage Publications, Beverly Hills (1980) at 76.

<sup>31</sup>*Greenville Television, Inc.*, 10 FCC Rcd 6491, 6493, n. 11 (C.S. Bur. 1995).

Lest any doubt exist that the Commission considers DMAs as sound conceptually, one need only point to the Commission's use of DMAs for those markets where no ADIs have been defined by Arbitron.<sup>32</sup>

The Commission, therefore, must not now suddenly blink reality. Nothing could be more contrary to Congressional intent and the clear objectives of the must carry requirement. The DMA, like the ADI, is a true reflection of local markets. In the absence of the ADI, the DMA is the only sensible alternative.



Despite the obvious logic of simply substituting the DMA for the ADI and despite its decision three years ago to update the market definitions every three years, the Commission now proposes to freeze the 1991-92 ADI market definitions for purposes of the must carry/retransmission consent rules.


The various elements of the rationale for the Commission's proposal range from tenuous to absurd. First, the Commission points to "the advantage of providing stability."<sup>33</sup> Beyond begging the question of what the "advantage" of stability (versus reality) may be, this assertion clashes with the Commission's determination in 1993 that the triennial revision provided "stability for the affected parties."<sup>34</sup> In 1993, the Commission achieved a balance between stability and reality which enjoyed a perfect fit with the general scheme of must carry/retransmission consent elections.

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<sup>32</sup>*Report and Order*, 8 FCC Rcd at 2975.

<sup>33</sup>*Notice* at ¶7.

<sup>34</sup>*Report and Order*, 8 FCC Rcd at 2975.



Rather than adjust the ADI market definitions annually when Arbitron issued a new list, so as to reflect reality perfectly, the Commission adopted a triennial revision to correspond with the triennial must carry/retransmission consent elections required by the statute.<sup>35</sup> Thus, the Commission already has “stability.” Moreover, it offers no reason whatsoever why perpetual stability is desirable. ALTV respectfully suggests that such a proposal involving a policy U-turn, but lacking any stated benefit, invites judicial rebuke.<sup>36</sup>

Second, while citing no particular fault with triennial revisions, the Commission contents itself to state that it is “not clear” that revising the list “involves any systematic improvement in market definitions.”<sup>37</sup> Such ambivalence far from inspires confidence in the Commission’s proposals. Furthermore, a change in regulations involving embrace of a concept discarded only three years ago (*i.e.*, triennial revisions) must find support in some compelling change of circumstance or regulatory policy.<sup>38</sup> Yet, the Commission cites no pertinent change of circumstance and hardly may countermand the fundamental policy dictated by Congress that stations be carried in their economic market areas.

The Commission also worries that the market definition process is somewhat circular because “cable carriage influences market allocations which determines cable carriage.”<sup>39</sup> In

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<sup>35</sup>*Report and Order*, 8 FCC Rcd at 2975. As INTV pointed out at the time, “An annual flip-flop between ADIs would be aggravating to stations, cable systems and viewers. Furthermore, a temporary, but anomalous county shift would disrupt viewing patterns needlessly.” Comments of the Association of Independent Television Stations, Inc., MM Docket No. 92-259 (filed January 4, 1993) at 4-5.

<sup>36</sup>*Greater Boston Television Corporation v. FCC*, 444 F. 2d 841, 852-853 (D.C. Cir. 1970).

<sup>37</sup>*Notice* at ¶7.

<sup>38</sup>*Greater Boston Television v. FCC*, *supra*.

<sup>39</sup>*Notice* at ¶7, n.9.



particular, the Commission says, “Over time this measurement process could tend to expand the size of larger markets with more numerous and stronger stations.”<sup>40</sup> Such concerns provide no credible basis for locking an increasingly obsolete list into place. The underlying premise itself is faulty. No market is likely to *expand* because market stations are carried *on cable* into a new county. Cable carriage would be required only *after* the county is included in the market. Unless and until the county is shifted from one DMA into the new market DMA, no cable system could be required to carry a signal from that market.<sup>41</sup> Cable carriage, therefore, rarely, if ever, would influence a market allocation or cause any market to expand. Thus, the circularity alleged by the Commission does not exist.<sup>42</sup>

The Commission then attempts to get up a head of steam for its proposal by stating that “[W]hile one system or the other system may provide a more sophisticated analysis in particular areas, it is not clear whether the changes as a whole are anything other than random statistical variations based upon transitory changes in audience levels.”<sup>43</sup> This, at best, is a “throw the baby out with the bath water” approach and in reality reflects a wholly unfounded concern. Even assuming *arguendo* that some counties shift from one DMA to another based on statistical quirks, most shifts still would result from genuine shifts in viewing. Under the Commission’s proposal,

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<sup>40</sup>*Id.*

<sup>41</sup>Any cable carriage which did occur would be pursuant to retransmission consent because the county by definition would be outside the local must carry area. Carriage via retransmission consent, however, could occur regardless of whether the county was in the station’s home DMA or another DMA.

<sup>42</sup>The Commission may well be correct in stating that larger markets with more numerous stations might be in a relatively stronger position in terms of gaining higher audience shares in a county, but, again, that is no function of cable carriage.

<sup>43</sup>*Notice* at ¶7.



no more shifts would be recognized. Rigidity would supplant reality. The objectives of the statute would be thwarted. The tail would wag the dog.

More to the point, the Commission provides no basis for its qualms and, likely, none exist. Ratings services insist on statistical significance. Something as significant as the shift of a county from one DMA to another would only be based on viewing estimates considered statistically significant and reliable.

With respect to transitory shifts in audience, ALTV assumes the Commission is concerned about audience shifts among stations based on station or programming popularity. Again, however, the Commission provides no basis whatsoever for this concern. ALTV respectfully submits that whereas audiences may shift among *stations*, they are far less likely to do so between *markets*. Little reason exists for a viewer to view a particular program on an out-of-market station, as opposed to the local station.<sup>44</sup>

Finally, in this regard, any concern about county shifts based on either transitory changes in audience or statistical quirks already is largely ameliorated by the current triennial revision process. Whereas an annual revision contemporaneous with release of Nielsen's new DMA list each year would pick up every county shift, the triennial review tends to reflect only enduring, rather than transitory shifts in county designations.

The third leg of the Commission's rationale for adopting the 1991-92 ADI list stems from questions supposedly raised by "changing from one system to the other" with respect to the "numerous cases which have already been processed under Section 614(h) revising market areas

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<sup>44</sup>This, of course, assumes that the same array of programming is available from both markets. Where a larger market offers more stations and a wider variety of programming, stations in the larger market may well draw a larger cumulative audience. Again, as pointed out above (at 14-15), however, this is in no way a function of cable carriage or even ADI or DMA county assignments. Moreover, the tendency of stations in the larger market to garner more viewing on a cumulative basis is not a *transitory* phenomenon and, thus, provides no basis for the Commission's concerns.

with respect to particular communities.”<sup>45</sup> This concern gives new dimension to the word “specious.” No change of “system” is involved. Using DMAs permits the Commission to maintain its present system and processes. It is the Commission’s proposal that would change the system by eliminating the triennial updates. ALTV also wonders what “questions” possibly could be raised. Again, the Commission is utterly mute. With due respect, ALTV must point out that those “numerous cases” have been decided *irrespective* of the general market definition. Indeed, by definition, they are the exceptions to the rule. Moreover, if a revision has been made to reflect more accurately a station’s market, none of the factors upon which the market modification was based would change if DMAs were used in lieu of ADIs. Indeed, in some cases, the fact that an area was within a station’s DMA, but outside its ADI, provided grounds for the Commission’s determination to include the county or community in the stations’ market!<sup>46</sup>

Lastly, with respect to administrative burden, ALTV submits that the Commission ought be more concerned that locking in an already five year old list would spawn more and more market revision cases as the list becomes increasingly obsolete and outdated.

Thus, the Commission has launched its proposal from a pad of faulty premises. No rationale basis or supportable concern has been offered to justify the seminal change in approach embodied in the Commission’s proposal. This lack of justification would be fatal even if the matter arose in a vacuum -- which it does not. Congress established the overarching objective to which the Commission owes undying allegiance: market definitions must reflect the reality of stations’ economic market areas. Placed on the scale against this clear statutory objective, the Commission’s rationale causes not even the most imperceptible shift in the balance.

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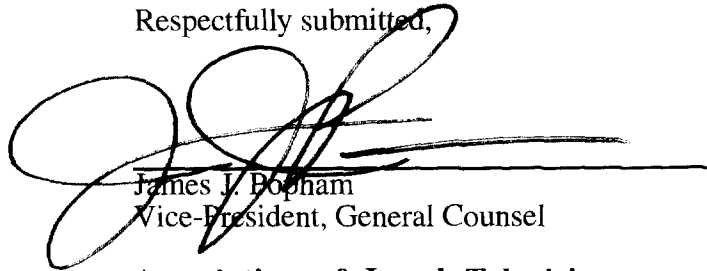
<sup>45</sup>Notice at ¶7.

<sup>46</sup>See n.33, *supra*.

[REDACTED]

In view of the above, ALTV respectfully urges the Commission to shelve its faulty proposal and embrace the only sound and sensible approach -- substitution of DMAs for ADIs.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

James J. Popham  
Vice-President, General Counsel

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